

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Jeremiah O'Brien, Anna O'Brien, and  
Process Data Control Corporation,

Plaintiffs,

v.

Susan Rydberg,

Defendant.

**ORDER**

Civil No. 07-1938 ADM/AJB

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Gregory A. Abbott, Esq., Abbott Law Office, Minneapolis, MN, on behalf of Plaintiffs.

Kathleen M. Loucks, Esq., Gislason & Hunter LLP, Minneapolis, MN, on behalf of Defendant.

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On June 28, 2007, oral argument before the undersigned United States District Judge was heard on Plaintiffs Jeremiah O'Brien, Anna O'Brien, and Process Data Control Corporation's ("Plaintiffs") Motion to Dismiss [Docket No. 7] Count One of Defendant Susan Rydberg's ("Rydberg") Counterclaims [Docket No. 2]. As stated at oral argument, Plaintiffs' Motion is **DENIED**.

After Plaintiffs' filed their Motion to Dismiss, Defendant filed an Amended Counterclaim [Docket No. 10], attempting to address the deficiencies raised by Plaintiffs. Plaintiffs argue but have not yet briefed whether Defendant's Amended Counterclaim remains legally deficient and warrants dismissal. However, because of the unusual procedural posture of the case, dismissal of Defendant's Amended Counterclaim is not appropriately before the Court. Defendant's Amended Counterclaim addressed a significant portion of Plaintiffs' concerns in the Motion to Dismiss. Accordingly, Plaintiffs' Motion to Dismiss is denied, but without prejudice to being reasserted. The dismissal of Plaintiffs' Motion at this time is not intended to convey

any sense the Court believes in the viability of Defendant's RICO Counterclaim. The denial of the Motion is premised entirely upon the procedural irregularity of the Motion being addressed to a Counterclaim which has since been amended.

BY THE COURT:

s/Ann D. Montgomery  
ANN D. MONTGOMERY  
U.S. DISTRICT JUDGE

Dated: June 28, 2007.